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## Local Rules BDRP section

[9040-1. Bankruptcy Dispute Resolution Program.](#)

### **BANKRUPTCY DISPUTE RESOLUTION PROGRAM**

The following Local Rules govern the Bankruptcy Dispute Resolution Program ("BDRP") in the United States Bankruptcy Court for the Northern District of California.

[9040-2. Purpose and Scope.](#)

#### **(a) Purpose.**

The Court recognizes that formal litigation of disputes in bankruptcy cases and adversary proceedings frequently imposes significant economic burdens on parties and often delays resolution of those disputes. The procedures established by these Local Rules are intended primarily to provide litigants with the means to resolve their disputes more quickly, at less cost, and often without the stress and pressure of litigation.

The Court also notes that the volume of cases, contested matters and adversary proceedings filed in this District has placed substantial burdens upon counsel, litigants and the Court, all of which contribute to the delay in the resolution of disputed matters. A Court authorized dispute resolution program, in which litigants and counsel meet with a Resolution Advocate, offers an opportunity to parties to settle legal disputes promptly and less expensively, to their mutual satisfaction. By these Local Rules the BDRP is adopted for the United States Bankruptcy Court for the Northern District of California.

It is the Court's intention that the BDRP shall operate in such a way as to allow the participants to take advantage of and utilize a wide variety of alternative dispute resolution methods. These methods may include but are not limited to: mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be those that are appropriate and applicable as determined by the Resolution Advocate and the parties, and will vary from matter to matter.

**(b) Scope.**

These Local Rules apply to all matters referred to the BDRP. All of the other Bankruptcy Local Rules apply, except to the extent that they are inconsistent with these Bankruptcy Local Rules 9040-1 through 9050-1.

**9040-3. Certification.**

Unless otherwise ordered, no later than 28 days after the initial status conference set in an [Adversary Proceeding](#) and whenever ordered by the Court in other matters, counsel and client shall sign, serve and file a certification of discussion and consideration of ADR options. The certification shall be filed on a form established for that purpose by the Court and in conformity with the instructions approved by the Court. If the client is a government or governmental agency, the certificate shall be signed by a person who meets the requirements of Civil L.R. 3-9(c). Counsel and client shall certify that both have:

- (1)** Read the information sheet entitled Bankruptcy Dispute Resolution Program Instructions for Parties;
- (2)** Discussed the available dispute resolution options provided by the Court and private entities; and
- (3)** Considered whether their case might benefit from any of the available dispute resolution options.

**9041-1. Eligible Cases.**

Unless otherwise ordered by the Judge handling the particular matter, all controversies arising in an [adversary proceeding](#), [contested matter](#), or other dispute in a bankruptcy case, will be eligible for referral to the BDRP except:

- (a)** Employment and compensation of professionals;
- (b)** Compensation of trustees and examiners;
- (c)** Objections to [discharge](#) under 11 U.S.C. §727, except where such objections are joined with disputes over dischargeability of debts under 11 U.S.C. §523; and
- (d)** Matters involving contempt or other types of sanctions.

**9042-2. Qualifications of Resolution Advocates.****(a) Attorneys.**

In order to qualify for service as a Resolution Advocate, each attorney applicant shall certify to the Court that the applicant:

- (1) Is, and has been, a member in good standing of the bar of any state or of the District of Columbia for at least 5 years;
- (2) Is a member in good standing of the federal courts for the Northern District of California;
- (3) Has served as the principal attorney of record in active matters in at least 3 bankruptcy cases (without regard to the party represented) from case commencement to the earlier of the date of the application or conclusion of the case, or has served as the principal attorney of record for a [party in interest](#) in at least 3 adversary proceedings or contested matters from commencement through conclusion; and
- (4) Is willing to serve as a Resolution Advocate for the next one year term of appointment, and to undertake to evaluate, mediate or facilitate settlement of matters no more often than once each quarter of that year, subject only to unavailability due to conflicts, personal or professional commitments, or other matters which would make such service inappropriate.
- (5) Attorneys who do not have the bankruptcy experience described in B.L.R. 9042-2(a)(3), but who do have adequate alternative dispute resolution training and experience to qualify them for appointment as Resolution Advocates, shall be considered qualified for purposes of this rule provided they satisfy the requirements of B.L.R. 9042-2(a)(1) and (4).

**(b) Non-attorney Resolution Advocates.**

Each non-attorney applicant shall submit a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be appointed to the Panel. In addition, such applicants shall also make the same certification required of attorney applicants as set forth in B.L.R. 9042-2(a)(4).

9042-3. Annual Selection of Resolution Advocates.

Each appointment year the Bankruptcy Judges of the Court will select the Panel from the applications submitted, giving due regard to alternative dispute resolution training and experience and such matters as professional experience and location so as to make the Panel appropriately representative of the public being served by the BDRP. Appointments will be limited to keep the panel at an appropriate size and to ensure that the panel is comprised of individuals who have broad-based experience, superior skills and qualifications from a variety of legal specialties and other professions.

9042-4. Geographic Areas of Service.

The Resolution Advocates on the Panel will indicate to the Court the city or cities within the District in which they are willing to act or serve.

#### 9042-5. Training.

Before first serving as a Resolution Advocate on any assigned Matters, each person selected pursuant to B.L.R. 9042-3 shall have completed requisite alternative dispute resolution training provided by the Court or approved by the BDRP Administrator.

#### 9043-1. Administration of the BDRP.

A Judge of this Court will be appointed by the Chief [Bankruptcy Judge](#) to serve as the BDRP Administrator. The BDRP Administrator will be aided by a staff member of the Court, who will maintain and collect applications, maintain the roster of the Panel, track and compile results of the BDRP, and handle such other administrative duties as are necessary.

#### 9044-1. Assignment to the BDRP.

**(a)** A [contested matter](#) in a case, [adversary proceeding](#), or other dispute (hereinafter collectively referred to as "Matter" or "Matters") may be assigned to the BDRP by order of the Judge at a status conference or other hearing, or if requested by the parties by submission of a stipulated order. While participation in the BDRP is intended to be voluntary, any Judge, acting sua sponte or on the request of a party, may designate specific Matters for inclusion in the program. If a Matter is to be assigned to the BDRP, the parties will be presented with the order assigning the Matter to the BDRP, and with a current roster of the Panel. The parties shall normally be given the opportunity to confer and designate a mutually acceptable Resolution Advocate as well as an alternate Resolution Advocate. If the parties cannot agree, or if the Judge deems selection by the Court to be appropriate and necessary, the Judge shall select a Resolution Advocate. Nothing contained in these Local Rules is intended to preclude other forms of dispute resolution with consent of the parties and, where required, approval of the Court.

**(b)** The original of the order assigning a Matter to the BDRP shall be docketed and retained in the case or adversary proceeding file and copies shall be mailed promptly by the party so designated by the Judge to the assigned Resolution Advocate, the alternate Resolution Advocate, the BDRP Administrator's staff assistant and to all other parties to the dispute. Assignment to the BDRP shall not alter or affect any time limits, deadlines, scheduling matters or orders in any adversary proceeding, contested matter or other proceeding, unless specifically ordered by the Court.

#### 9044-2. Service of Resolution Advocate.

No Resolution Advocate may serve in any Matter in violation of the standards set forth in 28 U.S.C. § 455. An attorney Resolution Advocate shall also promptly determine all conflicts or potential conflicts in the same manner as an attorney would under the California Rules of Professional Conduct if any party to the dispute were a client. A non-attorney Resolution Advocate shall promptly determine all conflicts or potential conflicts in the same manner as under the applicable rules pertaining to the Resolution Advocate's profession. If the Resolution Advocate's firm has represented one or more of the parties, the Resolution Advocate shall promptly disclose that circumstance to all parties in writing. A party who believes that the assigned Resolution Advocate has a conflict of interest shall promptly bring the matter to the attention of the Resolution Advocate. If the Resolution Advocate does not withdraw from the assignment, the matter shall be brought to the attention of the Court by the Resolution Advocate or any of the parties.

#### 9045-1. Dispute Resolution Procedures.

##### **(a) Availability of Resolution Advocate.**

Promptly after appointment, a Resolution Advocate not available to serve in the Matter shall notify the parties, the alternate Resolution Advocate, and the BDRP Administrator's staff assistant of that unavailability. The alternate Resolution Advocate shall thereafter serve as the Resolution Advocate.

##### **(b) Initial Telephonic Conference.**

As soon as practicable after notification of appointment, the Resolution Advocate shall conduct a telephonic conference with counsel for the parties to provide preliminary information to the Resolution Advocate concerning the nature of the Matter, the expectations of the parties, and anything else which will facilitate the process.

##### **(c) BDRP Conference Scheduling.**

Within 7 days of the telephonic conference, the Resolution Advocate shall give notice to the parties of the time and place for the BDRP conference, which conference shall commence not later than 28 days following the date of appointment of the Resolution Advocate, and which shall be held in a suitable neutral setting, such as the office of the Resolution Advocate, at a location convenient to the parties. Upon written stipulation between the Resolution Advocate and the parties, the BDRP conference may be continued for a period not to exceed 28 days.

##### **(d) BDRP Statements.**

Unless modified by the Resolution Advocate, no later than 14 days after the date of the order assigning the Matter to the BDRP, each party shall submit directly to the Resolution Advocate, and shall serve on all other parties, a written BDRP statement. Such statements shall not exceed 15 pages (not counting exhibits and attachments). While such statements may include any information that would be useful, they must:

- (1)** Identify the person(s), in addition to counsel, who will attend the session as representative of the party with decision making authority;
- (2)** Describe briefly the substance of the dispute;

- (3)** Address whether there are legal or factual issues whose early resolution might appreciably reduce the scope of the dispute or contribute significantly to settlement;
- (4)** Identify the discovery that could contribute most to equipping the parties for meaningful discussions;
- (5)** Set forth the history of past settlement discussions, including disclosure of prior and any presently outstanding offers and demands;
- (6)** Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial; and
- (7)** Indicate presently scheduled dates for further status conferences, pretrial conferences, trial or otherwise.

**(e) Statements Not To Be Filed.**

The written BDRP statements shall not be filed with the Court and the Court shall not have access to them.

**(f) Identification of Participants.**


Parties may identify in the BDRP statements persons connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the BDRP conference would improve substantially the prospects for making the session productive; the fact that a person has been so identified, shall not, by itself, result in an order compelling that person to attend the BDRP conference.

**(g) Documents.**

Parties shall attach to their written BDRP statements copies of documents out of which the dispute has arisen, e.g., contracts, or those whose availability would materially advance the purposes of the BDRP conference.

**9046-1. Conduct of the BDRP Conference.**

The BDRP conference shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses. Where necessary, the Resolution Advocate may conduct continued BDRP conferences after the initial session. As appropriate, the Resolution Advocate may:

- (a)** Permit each party, through counsel or otherwise, to make an oral presentation of its position;
- (b)** Help the parties identify areas of agreement and, where feasible, formulate stipulations;
- (c)** Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Resolution Advocate that supports these assessments;
- (d)** Assist the parties in settling the dispute;
- (e)** Estimate, where feasible, the likelihood of liability and the dollar range of damages;
- (f)** Help the parties devise a [plan](#)  for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to participate in meaningful settlement discussions or to posture the case for disposition by other means; and
- (g)** Determine whether some form of follow-up to the conference would contribute to the case development process or to settlement.

#### 9047-1. Confidentiality.

**(a)** All written and oral communications made in connection with or during any BDRP conference, including the BDRP statement referred to in B.L.R. 9045-1(d), shall be subject to all the protections afforded by Fed. R. Evid. 408 and by Bankruptcy Rule 7068. The Resolution Advocate may ask the parties to sign a confidentiality agreement provided by the Court.

**(b)** No written or oral communication made by any party, attorney, Resolution Advocate or other participant in connection with or during any BDRP conference may be disclosed to anyone not involved in the Matter. Nor may such communication be used in any pending or future proceeding in this Court to prove liability for or invalidity of a [claim](#) or its amount. Such communication may be disclosed, however, if all participants in the BDRP, including the Resolution Advocate, so agree. Notwithstanding the foregoing, this B.L.R. 9047-1 does not require the exclusion of any evidence:

**(1)** Otherwise discoverable merely because it is presented in the course of a BDRP conference; or

**(2)** Offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**(c)** Nothing in this B.L.R. 9047-1 shall be construed to prevent parties, counsel or Resolution Advocates from responding in absolute confidentiality, to inquiries or surveys by persons authorized by this Court to evaluate the BDRP. Nor shall anything in this section be construed to prohibit parties from entering into written agreements resolving some or all of the Matter or entering or filing procedural or factual stipulations based on suggestions or agreements made in connection with a BDRP conference.

#### 9048-1. Suggestions and Recommendations of Resolution Advocate.

If the Resolution Advocate makes any oral or written suggestions to a party's attorney as to the advisability of a change in that party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the party. The Resolution Advocate shall have no obligation to make any written comments or recommendations, but may, as a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Clerk or made available in whole or in part, directly or indirectly, to the Court.

#### 9049-1. Procedures Upon Completion of BDRP Conference.

Upon the conclusion of the BDRP conference, the following procedure shall be followed:



**(a)** If the parties have reached an agreement regarding the disposition of the Matter, the parties shall determine who shall prepare the writing to dispose of the Matter, and they may continue the BDRP conference to a date convenient to all parties and the Resolution Advocate if necessary. The Court will accommodate parties who desire to place any resolution of a Matter on the record during or following the BDRP conference. Where required, they shall promptly submit the fully executed stipulation to the Court for approval;

**(b)** The Resolution Advocate shall file with the Court and serve on the parties and the BDRP Administrator's staff assistant, within 14 days, a certificate in the form provided by the Court, showing whether there has been compliance with the BDRP conference requirements of these Local Rules, and whether or not a settlement has been reached. Regardless of the outcome of the BDRP conference, the Resolution Advocate will not provide the Court with any details of the substance of the conference.

#### 9049-2. Evaluation.

In order to assist the BDRP Administrator in compiling useful data to evaluate the BDRP, and to aid the Court in assessing the efforts of the members of the Panel, the Resolution Advocate shall report to the BDRP Administrator's staff assistant providing an estimate of the number of hours spent in the BDRP conference and statistical and evaluative information, which report shall be on a form provided by the Court.

#### 9050-1. Fee for Service of Resolution Advocates.

The Resolution Advocates are authorized to charge each side, whether or not represented by counsel, up to \$100 for their services. This fee, which is waiveable in whole or in part in the discretion of the Resolution Advocate, is applicable for all matters assigned to the BDRP by Court order dated on or after January 2, 1999.

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